



From Jurisdictional Safeguard to Rubber Stamp: Constitutional Examination of Sections 292BC of ITA 1961 & 522 of ITA 2025

Setting the Context

The power to reopen completed assessments has always occupied a sensitive space in tax jurisprudence. It disturbs finality, unsettles settled positions, and exposes taxpayers to renewed scrutiny. Recognising this inherent imbalance, Parliament consciously embedded safeguards within the statutory framework, of which the requirement of prior approval under section 151 stands as one of the most critical. This approval was never intended to be ornamental. It was designed as a jurisdictional filter, ensuring that the extraordinary power to reassess is exercised with due care, deliberation, and responsibility at a higher administrative level.

“Even this reopening can be done only after the approval of the Principal Chief Commissioner, the highest level of the Income Tax Department.” These very precise words, delivered with visible emphasis by our Hon’ble Finance Minister while introducing the new reassessment regime, in her Union Budget 2021-22 speech, were not merely a statement of procedure but a solemn assurance of restraint.

The resounding thump of desks across the House reflected a shared legislative conviction that the power to reopen completed assessments would be exercised only after the highest level of institutional scrutiny. Yet, in a striking turn of legislative course, the very same Parliament, through the Finance Bill 2026, has introduced a retrospective amendment by inserting an altogether new section 292BC in the Income Tax Act 1961, retrospectively with effect from 1 April 2021, and this new section reads as,

“Notwithstanding anything contained in this Act or in any judgement, order, or decree of any Court, for the removal of doubts, it is hereby clarified that any approval given by an income-tax authority in relation to any assessment, reassessment or recomputation proceedings under this Act shall be deemed to be administrative and supervisory in nature and shall not be invalid by reason of any insufficiency of the reasons recorded or by reason of any defect in the form or manner of its authentication or communication including whether digital signature have been appended to such approval or not, where such approval is granted electronically.”

A corresponding amendment has also been carried out in the Income-tax Act, 2025, wherein section 522 stands substituted to incorporate provisions on identical lines as section 292BC of the Income-tax Act, 1961, thereby extending the same deeming fiction regarding the nature and validity of approvals into the new legislative framework.

The contrast is both stark and telling. What was once projected as a robust and substantive jurisdictional safeguard now stands recharacterised, retrospectively, as a mere procedural formality. The shift is not merely textual but conceptual, and its implications extend beyond statutory interpretation into the realm of constitutional principle.



The Explanatory Memorandum: Legislative Reorientation

The Explanatory Memorandum to the amended Finance Bill 2026 provides a candid insight into the newly conceived legislative intent behind the insertion of an altogether new section 292BC, in the Income Tax Act, 1961, retrospectively w.e.f. 1.4.2021. It states that the approval system under the Act is intended to be only a procedural and administrative check and nothing beyond it. It further asserts that courts have erred in reading quasi-judicial elements into such approvals and in quashing reassessment proceedings on grounds such as mechanical application of mind or absence of detailed reasoning.

The Memorandum goes on to justify the amendment on the basis that substantial revenue has been adversely affected because courts have invalidated reassessment proceedings without examining the merits, solely on the ground of defective approvals. It therefore proposes to clarify that approvals shall not be invalid merely due to insufficiency of reasons or defects in form, authentication, or communication.

Rubber Stamp Approvals and Constitutional Fragility

From a constitutional perspective, such dilution raises serious concerns under the equality and rule of law framework embodied in Articles 14 and 265 of the Constitution of India. The power to reopen completed assessments, being a coercive State action, must necessarily be exercised in a manner that is just, fair, and reasonable, as consistently held in *Maneka Gandhi v. Union of India* reported in (1978) 1 SCC 248.

The requirement of prior approval under section 151 has historically operated as a structural safeguard against arbitrary exercise of this power, ensuring that the decision to reopen is subjected to independent scrutiny at a higher level. If this safeguard is reduced to a mere formality or a rubber stamp, the check against arbitrariness stands effectively neutralised, thereby risking violation of Article 14. Further, in the absence of meaningful application of mind, the very assumption of jurisdiction to tax may be rendered vulnerable under Article 265, which mandates that no tax shall be levied or collected except by authority of law. A law that permits reopening of assessments without real and substantive oversight may therefore struggle to withstand constitutional scrutiny, as it undermines both procedural fairness and the discipline inherent in lawful exercise of taxing power.

Judicial Doctrine: Approval as a Jurisdictional Condition Precedent

This newly developed legislative position stands in direct contrast with the consistent judicial understanding developed over decades. The hon'ble Supreme Court in its judgement in the case of '*Chhugamal Rajpal v. S.P. Chaliha*' reported in (1971) 79 ITR 603 SC held that sanction granted without application of mind is invalid and renders the reassessment proceedings void. The Court emphasised that the approving authority must consider the material placed before it and form an independent opinion.

This principle was reaffirmed in '*CIT v. S. Goyanka Lime and Chemical Ltd.*' (2023) 453 ITR 242 SC where the hon'ble Apex Court upheld the view that a mere endorsement stating that



the authority is satisfied does not meet the statutory requirement. The absence of reasoning was treated as indicative of absence of application of mind, thereby vitiating the assumption of jurisdiction.

Hon'ble High Courts, on PAN India basis, have consistently echoed this position. In '*United Electrical Co. Pvt. Ltd. v. CIT*' reported in (2002) 258 ITR 317 (Delhi), the hon'ble Delhi High Court held that approval must reflect due consideration of the reasons recorded by the Assessing Officer. In '*PCIT v. N.C. Cables Ltd.*' reported in (2017) 391 ITR 11 (Delhi), the hon'ble Court reiterated that the requirement under section 151 is a meaningful safeguard and cannot be reduced to a ritualistic exercise. Similarly, in '*German Remedies Ltd. v. DCIT*' reported in (2006) 287 ITR 494 (Bombay), the hon'ble Bombay High Court emphasised that sanction is not an idle formality but a substantive condition ensuring responsible exercise of power.

The judicial consensus is therefore unambiguous. Approval under section 151 is a jurisdictional requirement, and failure to comply with it goes to the root of the proceedings.

Post Transition Litigation: Continued Enforcement of Jurisdictional Discipline

The transition to the new reassessment regime brought about by the Finance Act 2021 led to extensive litigation. Notices issued during the transition period were initially struck down by various High Courts but were subsequently revived by the hon'ble Supreme Court in '*Union of India v. Ashish Agarwal*' reported in (2022) 444 ITR 1 (SC), through an exercise of powers under Article 142 of the Constitution. The hon'ble Apex Court treated such notices as show cause notices under section 148A, thereby granting them a fresh lease of life.

Thereafter, in '*Rajeev Aggarwal v. Union of India*' reported in (2024) 469 ITR 46 (SC), the hon'ble Supreme Court upheld the benefit of TOLA extended timelines in the new reassessment regime introduced post Finance Act 2021, in respect of the subject matter reassessment notices but simultaneously emphasised on the structural framework of the new reassessment regime and recognised the importance of the safeguards embedded therein.

Taking cognizance of the sanctity of the substantive jurisdictional safeguards embedded in section 151, the hon'ble High Courts across the country continued to invalidate these reassessment proceedings, particularly for Assessment Years 2016-17 and 2017-18, on the ground that approval under section 151 was either absent, granted by an incompetent authority, or granted without application of mind. Decisions such as '*Twylight Infrastructure Pvt. Ltd. v. ITO*' reported in (2024) 463 ITR 702 (Delhi) and '*Rohit Kumar v. ITO*' reported in (2025) 476 ITR 691 (Delhi) before the hon'ble Delhi High Court reaffirm that compliance with section 151 is not diluted by the validating exercise undertaken in *Ashish Agarwal*. The jurisdictional nature of approval continues to operate with full force.

Retrospective Clarification or Legislative Overreach?

It is in this precise judicial backdrop that an altogether new section 292BC has been introduced in the Income Tax Act 1961 as per the amended Finance Bill 2026, with retrospective effect



from 1 April 2021. Section 522 of the Income-tax Act, 2025 has likewise been substituted to mirror the provisions of section 292BC of the Income-tax Act, 1961.

The provisions seek to declare that the ‘approval system’ in the Income Tax Act, is merely administrative and supervisory in nature and nothing beyond that and cannot be invalidated on account of insufficiency of reasons or procedural defects.

When read alongside the Explanatory Memorandum, the legislative objective becomes evident. The amendment seeks to protect reassessment proceedings that were otherwise vulnerable to challenge on the ground of defective approvals, particularly those pertaining to earlier assessment years that had already undergone multiple rounds of judicial scrutiny.

This raises a fundamental constitutional issue. From early Constitution Bench pronouncements to more recent fiscal rulings, the Supreme Court has repeatedly affirmed that while retrospective amendments are within legislative competence, they must operate within defined constitutional limits and cannot transgress the discipline imposed by principles of defect removal, reasonableness and separation of powers.

Section 292BC does not address the core defect identified by courts, namely the absence of application of mind. It merely declares that such deficiency shall not invalidate the approval. This raises a legitimate question as to whether the provision is a true curative measure or an attempt at legislative overruling. The answer must be sought in the time tested and settled jurisprudence of the Hon’ble Supreme Court, developed over decades, wherein the Court has consistently delineated the constitutional boundaries of retrospective legislative intervention.

Administrative Characterisation and Jurisdictional Reality

The attempt to describe approval as administrative and supervisory does not alter its essential character. A requirement that conditions the very assumption of jurisdiction cannot be reduced to a procedural formality by legislative declaration. The nature of a safeguard is determined by its function within the statutory scheme, not by the label assigned to it.

Approval under section 151 performs a critical function. It ensures that the decision to reopen an assessment is subjected to scrutiny by a higher authority. It acts as a check against arbitrariness and reinforces accountability. To reduce such a safeguard to a mere administrative step is to fundamentally alter the balance between power and protection embedded in the statute.

Constitutional Discipline on Retrospective Validation

The hon’ble Supreme Court of India has consistently held that while the legislature possesses the power to enact retrospective laws, it cannot merely override judicial decisions by a bare declaration. **A valid retrospective amendment must cure the specific defect or infirmity on which the judgment was founded.**

In *Shri Prithvi Cotton Mills* (1969) 2 SCC 283, the Constitution Bench held that the legislature may remove the basis of a judicial decision by curing the defect, but cannot simply declare the



judgment to be wrong. This principle was reaffirmed in *Indian Aluminium Co. v. State of Kerala* (1996) 7 SCC 637, where it was held that legislative competence does not extend to nullifying judgments without removing the cause of invalidity. Similarly, in *National Agricultural Cooperative Marketing Federation of India Ltd. v. Union of India* (2003) 5 SCC 23, the Court emphasised that retrospective legislation must be reasonable and cannot be used to subvert judicial decisions without addressing their statutory foundation.

The Court has also consistently applied **the doctrine of substance over legislative label**. In *Virtual Soft Systems Ltd. v. CIT* (2007) 289 ITR 83 (SC), it was held that merely describing an amendment as clarificatory is not determinative, and the Court must examine its true nature. This position was reiterated in *Union of India v. Martin Lottery Agencies Ltd.* [2009] 20 STT 203 (SC) and *Sedco Forex International Drill Inc. v. CIT* (2005) 289 ITR 310 (SC), where it was held that provisions introducing substantive changes cannot be treated as retrospective merely because they are framed as explanations or for removal of doubts.

Further, in *CIT v. Vatika Township Pvt. Ltd.* (2014) 367 ITR 466 (SC), the Constitution Bench underscored **that fairness and predictability are foundational to tax law**, and amendments imposing new burdens are ordinarily prospective. **Retrospectivity must be justified and cannot arbitrarily unsettle settled rights**. This principle was reaffirmed in *CIT v. Essar Teleholdings Ltd.* (2018) 3 SCC 253, where the Court held that provisions introducing new computational mechanisms cannot be treated as retrospective in the absence of clear legislative mandate.

These authorities collectively establish that retrospective legislation must genuinely cure defects, must not merely override judicial interpretation, and must adhere to principles of fairness, reasonableness, and constitutional discipline.

Vested Rights and Retrospective Prejudice

The retrospective nature of section 292BC also impacts the rights of taxpayers. Based on consistent judicial pronouncements, taxpayers had a legitimate expectation that reassessment proceedings lacking valid approval could be challenged successfully. By retrospectively validating such approvals, the amendment effectively extinguishes this defence.

In '*CIT v. Vatika Township Pvt. Ltd.*' Supra, the hon'ble Supreme Court held that retrospective provisions that impose new burdens or impair existing rights must be interpreted with caution. The present amendment, by altering the legal consequences of past actions, raises concerns of fairness and constitutional propriety.

The Enduring Requirement: Application of Mind Cannot Be Dispensed With

It is important to note that the bare text of sections 292BC of ITA 1961 and 522 of ITA 2025 does not explicitly dispense with the requirement of application of mind. The provision addresses insufficiency of reasons and procedural defects, but it does not legitimise total absence of consideration. It is only the Explanatory Memorandum to the amended Finance Bill



2026, which makes a reference of the phrase ‘mechanical application of mind’. This leaves intact a narrow but significant area for judicial review.

Thus, these two sections, on a plain and careful reading, ought not to be construed as diluting or undermining the inherent jurisdictional safeguard embedded in section 151 of ITA 1961 and section 284 of ITA 2025, namely the mandatory requirement of independent application of mind by the approving authority. Its scope must be confined to addressing procedural imperfections and cannot be extended to legitimise approvals that suffer from absence of substantive consideration.

These sections must be interpreted in a manner that preserves its constitutional validity by confining its operation to procedural irregularities and not extending it to substantive jurisdictional defects. The requirement of independent application of mind, being fundamental to the concept of approval, cannot be legislatively presumed where it does not exist in fact.

Conclusion: Substantive Jurisdictional Safeguard at Risk of becoming a Mere Rubber Stamp

The introduction of section 292BC in ITA 1961 and section 522 in ITA 2025 marks a somewhat disquieting and unsettling shift in the legislative approach to reassessment safeguards. Though articulated as a measure of clarification, its practical effect appears to be a gradual dilution of what was historically recognised as a substantive jurisdictional requirement at the very core of a fair reassessment framework. What once operated as a meaningful institutional check, mandating conscious and independent scrutiny at the highest level, now risks being reduced, almost imperceptibly, to a procedural endorsement. The transformation is subtle, yet its implications are profound. A safeguard designed to restrain arbitrary exercise of power cannot, without consequence, be allowed to degenerate into a mere ritual. When approval is treated as sufficient irrespective of the depth of consideration, what was once a jurisdictional threshold begins to assume the character of a rubber stamp.

This shift also raises serious constitutional concerns. The discipline imposed by Articles 14 and 265 of the Constitution requires that coercive tax powers be exercised in a manner that is just, fair, and anchored in lawful authority. The requirement of prior approval under section 151 has long served as a structural safeguard against arbitrariness, ensuring that the assumption of jurisdiction is preceded by independent application of mind. Its dilution, whether express or by implication, risks unsettling this balance. A framework that permits reopening of assessments without meaningful supervisory scrutiny may not withstand constitutional scrutiny, as it weakens both procedural fairness and the legitimacy of the exercise of taxing power.

The implications of the Explanatory Memorandum are far reaching. If approvals are insulated from challenge despite absence of detailed reasoning or mechanical application of mind, the role of the approving authority stands effectively diluted. The safeguard risks becoming a mere formality, where approval is granted as a matter of routine without meaningful scrutiny.



This leads to an obvious yet important question. **If the approving authority is not required to independently apply its mind, what purpose does the requirement of approval serve. A safeguard that exists only in form but not in substance ceases to be a safeguard at all.**

The constitutional balance demands greater restraint. Legislative power undoubtedly extends to clarification and validation, but it does not extend to effacing the substance of safeguards or rendering judicial scrutiny otiose without curing the defect that invited such scrutiny in the first place. The integrity of tax administration lies not merely in the amplitude of its powers, but in the fairness of the processes through which those powers are exercised.

Ultimately, the legitimacy of reassessment proceedings cannot rest on retrospective deeming fictions or formal compliance alone. It must be anchored in a process that reflects genuine satisfaction, arrived at through independent application of mind and capable of withstanding objective scrutiny. The principle remains both simple and enduring. Jurisdiction is not a matter of form. It is a matter of substance. And no legislative declaration can convert a mechanical approval into a meaningful exercise of power.

[This Article, authored by our Founder- Shri Mayank Mohanka has also been published in Taxsutra]